In the Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-992

CARLOS M. MARTINEZ, PETITIONER

v.

UNITED STATES OF AMERICA, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE RESPONDENTS IN OPPOSITION

We invite the Court's attention to the following facts which indicate that the petition for a writ of certiorari was filed out of time. The judgment of the court of appeals was entered on August 5, 1975 (Pet. App. 12). A petition for rehearing was denied on October 3, 1975 (Pet. App. 13). The 90-day period under 28 U.S.C. 2101(c) within which a petition for a writ of certiorari in a civil case must be filed expired on January 2, 1976, and no extension of time for petitioning was obtained. The petition was not filed until January 3, 1976. Since the time limit specified by 28 U.S.C. 2101(c) is jurisdictional, it is respectfully submitted that the petition for a writ of certiorari should be denied.

ROBERT H. BORK,
Solicitor General.

FEBRUARY 1976.

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